IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 7, Original.

STATE OF ARKANSAS, COMPLAINANT,

vs.

STATE OF TENNESSEE, DEFENDANT.

ANSWER OF DEFENDANT.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of Tennessee, one of the United States of America, by Ben W. Hooper, Governor, and Charles T. Cates, Jr., Attorney General, by leave of this honorable court, to the original bill of complaint filed against said State of Tennessee by the State of Arkansas by and through her Attorney General.

This respondent, saving to herself the benefit of all proper exceptions to said bill, for answer thereto, or so much thereof

as she is advised is material or necessary for her to answer answering says:

1.

It is true that the western boundary of the territory ceded by the State of North Carolina to the United States in 1790, and which was admitted into the Union by act of Congress on June 1, 1796, as the State of Tennessee, was "the middle of the Mississippi River."

2.

At the time the defendant State of Tennessee was admitted into the Union, with her western boundary fixed at "the middle of the Mississippi River," as aforesaid, the other half of said river and the territory immediately adjacent thereto belonged to France, from whom it was acquired by the United States in 1803 as a part of the Louisiana purchase, and subsequently erected into what was called the Territory of Arkansas.

It is true, as alleged in the second paragraph of the bill, that in 1836 the State of Arkansas, complainant herein, was admitted into the Union, with its eastern boundary fixed at "the middle of the main channel of the Mississippi River" as it then flowed.

3.

The general course of the Mississippi River, as it flowed in and prior to 1836, between the States of Tennessee and Arkansas, from Pecan Point to Brandywine Point, may be stated with approximate accuracy in the third paragraph of the bill, but respondent reserves the right to correct any material error in said description to make it accord with the facts, if the same can now be ascertained.

It is true that in 1874, under the direction of the War Department of the United States, Col. Charles R. Suter made a steamboat reconnaissance of the Mississippi River below

the mouth of the Ohio, and your respondent is informed that thereafter the said Suter filed in said Department a map prepared by him and his assistants, purporting to show the result of their reconnaissance; but said map was not intended to show, and did not show, with any degree of accuracy, the location of the banks of the river at that time, but was intended to illustrate in a general way the result of the observations of the said Suter and his assistants from the deck of the steamboat upon which they passed up and down the river, then at the lowest recorded stage of water—which observations included mere estimates, without actual measurement of the width of the river or the distance between the permanent banks or between the islands and the mainland on either shore.

It is true that the earliest recorded survey of the Arkansas side of what, in her bill, complainant calls the *locus in quo*, was made in 1823, under the authority of the United States, and a map constructed by Major J. H. Humphreys, a civil engineer, from said survey and plat thereof made in 1823 and from calls and plats of Tennessee surveys and grants of lands on the Tennessee side of the then channel of the river, shows the location of the shore or bank lines on both sides of the river and of the islands therein at or about the year 1823, and also in 1836, when Arkansas was admitted into the Union, and is herewith exhibited and made a part of this answer as Exhibit A.

Further answering the third paragraph of the bill, respondent denies that any such changes in the location of the permanent banks of the Mississippi River and of the islands therein had occurred between 1823 and 1874, as is alleged in the bill and claimed to be shown by the reconnaissance sketch prepared, as aforesaid, by Colonel Suter and his assistants.

Further answering the third paragraph of the bill, respondent denies that prior to 1874 there had been any accretions to the west of Dean's Island, or any erosion into the Tennessee shore opposite, or that the main channel of the

Mississippi River, or the channel of commerce of said river, had been changed or deflected from around the north of Island 37 to between said island and the main Tennessee shore, as alleged in the bill.

4.

It is true that on the 7th day of March, 1876, the Mississippi River suddenly broke through and crossed the neck of the peninsula immediately across and southwest from Dean's Island, and formed for itself a new channel, gradually drawing the water from the old channel, which, in course of time, became dry land suitable for cultivation, and to a great extent covered with timber. This avulsion was graphically described in the opinion of the Circuit Court of Appeals, speaking through Judge Lurton, in the case of Stockley *vs.* Cissna, 119 Fed. Rep., 821-2, as follows:

> "The sudden change in the channel made in 1876, by which the river abandoned its long course around the bend known as the 'Devil's Elbow,' and cut a new, straight, and short channel across the neck of that bend, did not operate to change the boundary between Tennessee and Arkansas. The new channel was the result of a sudden and uncontrollable change in the direction of the main current of the stream. In cutting the new channel, some 2,000 acres of cultivated river bottom land was washed away in the course of about 60 hours. Within that time a new channel, some 20 to 40 feet deep, in ordinary water, was permanently established; being the channel now known as 'Centennial Cut-off.' This channel shortened the distance around the bend some 15 miles. As another direct result, the old channel of the river, so long the boundary between the two States of Tennessee and Arkansas, was completely deserted by the river, and in a short time became dry land. Thousands of acres of dry river bottom within the jurisdiction of Tennessee, as land lying on the east side of the main channel of the river, were by this sudden formation of the new channel placed upon the west

side of the Mississippi River; and the inhabitants of nearly an entire civil district of Tipton County, one of the counties of Tennessee lying on the Mississippi river, found themselves living on the west, instead of the east, side of the great river."

After the decision in Stockley *vs.* Cissna, as will be hereinafter more fully shown, the same part of the *locus in quo* became the subject of litigation in the courts of Tennessee in the case of State of Tennessee *vs.* Muncie Pulp Company *et al.*, reported in 119 Tenn., pp. 61-62, and said avulsion occurring on March 7, 1876, is described in the opinion of the Supreme Court of Tennessee as follows:

"Upon the date referred to, March 7, 1876, the river suddenly and with great violence, within about thirty hours, made for itself a new channel directly across the neck opposite the apex of Dean's Island, then reduced in width to about a mile, which new and shorter channel, thus made, it continues to occupy to this time. The new channel was called the 'Centennial Cut-off,' and the island made by it 'Centennial Island.' The change of the channel, as stated, was sudden and violent. About two thousand acres of valuable cultivated lands were swept away, with the farm-houses, gin-houses, and other improvements upon them, in a few hours, and the inhabitants with difficulty saved their lives and personal property. The old channel around the bend of the elbow was abandoned by the current of the river, but remained, for a few years, covered with dead water, becoming a lake or lagoon. It was no longer navigable, except in time of high water for small boats, and this continued only for a short time. The fall in the river around the elbow, from six to eight feet, was all condensed in the one mile of the cut-off, and made a strong current there. This, of course, drew the water from the old channel rapidly, and greatly reduced its depth. The old bed immediately began to fill with sand, sediment, and alluvial deposits, and bars formed in it. It became dry land, cottonwood and willow trees began to grow upon it,